

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

Re: ECF Nos. 7176, 8022, [8164]

**AAFAF'S LIMITED JOINDER AND STATEMENT IN SUPPORT OF THE
OVERSIGHT BOARD'S SUR-REPLY TO AMBAC ASSURANCE CORPORATION'S
REPLY IN SUPPORT OF ITS MOTION CONCERNING
APPLICATION OF THE AUTOMATIC STAY**

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), as fiscal agent for the Puerto Rico Infrastructure Financing Authority (“PRIFA”) *Enabling Act of the Fiscal Agency and Financial Advisory Authority*, Act 2-2017, hereby joins in the Sur-Reply filed by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) [ECF No. 8164] (the “Sur-Reply”)² to *Ambac Assurance Corporation and Financial Guaranty Insurance Company's Reply Memorandum of Law In Support of Their Motion Concerning Application of the Automatic Stay to the Revenues Securing PRIFA Rum Bond Taxes* [ECF No. 8022] (the “Reply”). Solely to the extent set forth herein, AAFAF hereby joins in the Sur-Reply and requests

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Sur-Reply.

that the Motion be denied for the reasons set forth in the Sur-Reply and those reasons previously addressed in *AAFAF's Opposition to Ambac's Assurance Corporation's Motion Concerning Application of the Automatic Stay [ECF No. 7176]* ("AAFAF Opp." [ECF No. 7829]):

1. Movants have still not provided any plausible basis to support their assertion that they have standing to bring the Motion. As the Sur-Reply explains, Movants are barred by the No-Action Clause from enforcing the bondholder remedies PRIFA specifically chose to provide for in the Trust Agreement. [ECF No. 8164, Sec. I.A., ¶¶ 1–4.] Only the Trustee may pursue such remedies pursuant to the Trust Agreement provisions. [ECF No. 8164, Sec. I.B., ¶¶ 8–10.] Movants attempt to characterize themselves as "Credit Facility providers" for the sole purpose of eschewing the No-Action Clause is similarly unavailing because as set forth in the Sur-Reply, Sections 701 and 704 of the Trust Agreement make clear that only the Trustee has the power to take action with respect to the funds and other moneys pledged thereunder (and only under the limited circumstances set forth in the Trust Agreement) [ECF No. 8164, Sec. I.A., ¶¶ 5–7.]

2. Further, as set forth in the Sur-Reply, Movants assertion in the Reply that they have prudential standing is misguided and ignores the plain language of PROMESA, the Trust Agreement and the Enabling Act. [ECF No. 8164, Sec. I.C., ¶¶ 11–14.] The Oversight Board has persuasively explained why Movants cannot seek to enforce PRIFA's rights. *Id.*

3. For this reason alone, AAFAF maintains that the Motion should be denied. (AAFAF Opp. ¶¶ 1–11.) But even if the Court finds the Motion is not barred by the No-Action Clause or that Movants have prudential standing, there is still ample reason for the Court to deny the Motion.

4. *First*, as explained in the Sur-Reply, Movants have failed to adequately respond to the Oversight Board's arguments that Movants are collaterally estopped from challenging the

District Court's determination that the automatic stay applies to the Rum Tax Remittances. [ECF No. 8164, Sec. I.C., ¶¶ 15–17.]

5. *Second*, for the reasons set forth by the Oversight Board in the Sur-Reply, Movants' lien is limited under the Enabling Act and Trust Agreement solely to money in the Sinking Fund, and Movants' arguments that rely on a contrary premise must fail. [ECF No. 8164, Sec. III., ¶¶ 18–38.] To this point, AAFAF joins in the Oversight Board's argument in Section III of the Sur-Reply in full.

RESERVATION OF RIGHTS

6. In the Sur-Reply, the Oversight Board responds to Movants' arguments that the Bondholders' lien on the Rum Tax Remittances is a property right that cannot be repealed or preempted. [ECF No. 8164, Sec. IV.] Given how many other reasons exist to deny the relief sought in the Motion, AAFAF declines to take a position on the preemption arguments raised in the Reply and the Sur-Reply at this time. However, AAFAF reserves all rights with respect to these issues including, without limitation, with respect to the limits of the Oversight Board's budgeting powers. AAFAF re-affirms its request the Court not address that argument in this context. (AAFAF Opp. ¶ 11.)

[Remainder of page intentionally left blank.]

Dated: July 19, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Peter Friedman

John J. Rapisardi
Suzanne S. Uhland
(Admitted *Pro Hac Vice*)
O'MELVENY & MYERS LLP
7 Times Square
New York, New York 10036
Tel: (212) 326-2000
Fax: (212) 326-2061

-and-

Peter Friedman
(Admitted *Pro Hac Vice*)
1625 Eye Street, NW
Washington, D.C. 20006
Tel: (202) 383-5300
Fax: (202) 383-5414

*Attorneys for the Puerto Rico Fiscal
Agency and Financial Advisory Authority*

/s/ Luis C. Marini

Luis C. Marini-Biaggi
USDC No. 222301
Email: lmarini@mpmlawpr.com

Carolina Velaz-Rivero
USDC No. 300913
E:mail: cvelaz@mpmlawpr.com

MARINI PIETRANTONI MUÑIZ LLC
250 Ponce de León Ave.
Suite 900
San Juan, Puerto Rico 00918
Tel: (787) 705-2171
Fax: (787) 936-7494

*Co-attorneys for the Puerto Rico Fiscal
Agency and Financial Advisory Authority*